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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,816	04/30/2001	Jacob McGuire	PA3941US	9954
22830	7590	07/23/2007	EXAMINER	
CARR & FERRELL LLP 2200 GENG ROAD PALO ALTO, CA 94303			AILES, BENJAMIN A	
		ART UNIT	PAPER NUMBER	
		2142		
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		07/23/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	09/843,816	MCGUIRE, JACOB
	Examiner	Art Unit
	Benjamin A. Ailes	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 May 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to correspondence filed 07 May 2007.
2. Claims 1-23 remain pending.

Response to Amendment

3. The affidavit filed on 07 May 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Merchant et al. (US 2002/0128815) reference. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Merchant et al. (US 2002/0128815) reference. The declaration is insufficient for the following reasons:

4. (A) The affidavit filed under 37 CFR 1.131 fails to establish that the acts were conceived or performed in this country, a NAFTA member country, or a WTO member country prior to the effective date of the Merchant et al. reference. See MPEP 715.
5. (B) Based on the language used on page 1, point 2 of the filed declaration, it is unclear if applicants are showing (a) actual reduction to practice of the invention prior to the effective date of the reference or (b) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice. If (b) is correct, it should be noted that applicant has failed to show due diligence between the date of conception and the date of reduction to practice. See 715.07(a).
6. (C) The affidavit filed under 37 CFR 1.131 fails to specifically give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by the applicant. Applicant has submitted three exhibits of source code, Exhibits 1, 2 and 3, but has failed to provide on the record that these three source code files work correctly and for the intended

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purpose of the claimed invention. Proof of actual reduction to practice requires a showing that the source code actually existed and worked for its intended purpose. See MPEP 715.07 (III). Further, it is unclear what portions of Exhibits 1, 2 and 3 specifically perform the claimed limitations. In order to show possession of the claimed invention, each and every claim limitation must be related to the Exhibits (i.e. page, line number, etc.).

7. (D) The affidavit filed under 37 CFR 1.131 is deficient with respect to the dependent claims. The declaration does not specifically discuss the dependent claims nor relate them specifically to the exhibits. Dependent claims, which applicants regard as obvious variations, need not be described specifically with respect to the exhibits.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 4, 10-12, 15 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Merchant et al. (US 2002/0128815 A1), hereinafter referred to as Merchant.

10. Regarding claims 1 and 12, Merchant discloses a uniform interface for configuring and managing a plurality of different types of network devices, comprising:

a library containing generic commands that can be applied to said network devices (page 2, paragraph 0028, lines 3-10; Merchant teaches storage of device independent commands and device specific commands.);

a plurality of plug-in modules that can register with said library, each of said modules operating to convert at least some of said generic commands into device-specific commands and transmit said device-specific commands to remote individual devices of a type that are associated with the module (p. 3, para. 0044; Merchant teaches device-independent modules that translate device related independent commands into device specific commands.).

11. Regarding claims 4 and 15, Merchant discloses the system wherein one of said generic commands establishes a connection to a network device through which configuration commands can be sent and information can be retrieved (p. 2, para. 29 and para. 31; Merchant teaches the sending of configuration signals and the querying for configuration information.).

12. Regarding claim 10, Merchant discloses the system wherein said library is responsive to the receipt of a command for a given device to determine the module that corresponds to said device and provide the received command to said module (p. 3, para. 0044).

13. Regarding claims 11 and 21, Merchant discloses the system wherein said modules convert responses received from the individual devices with which they are associated into a generic format for presentation to said library (p. 4, para. 0046).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 3, 5, 13, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merchant.

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16. Regarding claims 2, 3, 13 and 14, Merchant teaches the use of a communications network but does not explicitly detail “plug-in modules transmit each of said commands in accordance with a transmission protocol specific to the individual devices, respectively” and further “wherein one of said transmission protocols comprises Telnet”. However, Official Notice is taken that the use of specific transmission protocols, including Telnet, was old and well known in the art. It would have been obvious to one of ordinary skill at the time of the applicant’s invention to utilize a specific transmission protocol, for example Telnet, in order for network communication to be possible.

17. Regarding claims 5 and 16, Merchant teaches the system as claimed in claim 1 but does not clearly recite one of the generic commands retrieving the current configuration of a network device by executing appropriate commands on the device. Merchant however does teach the ability in paragraph 31 on page 2 the querying and reception of the current configuration device and therefore the claimed step of utilizing a generic command is deemed an obvious variation because Merchant’s teaching is within the scope of the claim, therefore one of ordinary skill would have been motivated to perform this step utilizing a generic command.

18. Claims 6-9, 17-20, 22 and 23 are rejected under 35 USC 103(a) as being unpatentable over Merchant in view of Rangachar (US 6,301,252 B1).

19. Regarding claims 6 and 17, Merchant teaches the system as claimed in claim 1 including the querying of configuration information with respect to the network device that is queried (para. 0032) but does not clearly teach the step to “render configuration information suitable for storage and saves it to a local file system”. However, in related art, Rangachar teaches in a similar environment wherein generic commands are utilized and translated into a device specific

command a generic command can be created which retrieves the configuration information with respect to a network device and this information is stored in a centralized control and management storage wherein the centralized control and management location stores the “state” of the network device (col. 7, ll. 5-22). One of ordinary skill in the art at the time of the applicant’s invention would have found it obvious to combine the teachings of Merchant with the teachings of Rangachar. One of ordinary skill would have been motivated to make such a combination wherein it is taught by Rangachar to within a system wherein generic commands are utilized, it is beneficial to further enhance network reliability and interoperability of switches and have further control over network switches (col. 4, ll. 18-24).

20. Regarding claims 7 and 18, Merchant teaches the system as claimed in claim 1 including the creation of generic commands (para. 0044) but does not clearly teach the step to “put a device into a mode where it can accept configuration commands through an established connection at an enabled level”. However, in related art, Rangachar teaches in a similar environment wherein generic commands are utilized and translated into a device specific command a generic command can be created which can control and make modifications to a network switch. Rangachar teaches the controlling and management of network switches (col. 4, ll. 58-62). One of ordinary skill in the art at the time of the applicant’s invention would have found it obvious to combine the teachings of Merchant with the teachings of Rangachar. One of ordinary skill would have been motivated to make such a combination wherein it is taught by Rangachar to within a system wherein generic commands are utilized, it is beneficial to further enhance network reliability and interoperability of switches and have further control over network switches (col. 4, ll. 18-24).

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21. Regarding claims 8 and 19, Merchant teaches the system as claimed in claim 1 including the creation of generic commands (para. 0044) but does not clearly teach the step “wherein one of said generic commands gives a device a complete configuration based on information from a stored configuration file”. However, in related art, Rangachar teaches in a similar environment wherein generic commands are utilized and translated into a device specific command a generic command can be created which can control and make modifications to a network switch.

Rangachar teaches the controlling and management of network switches (col. 4, ll. 58-62). One of ordinary skill in the art at the time of the applicant’s invention would have found it obvious to combine the teachings of Merchant with the teachings of Rangachar. One of ordinary skill would have been motivated to make such a combination wherein it is taught by Rangachar to within a system wherein generic commands are utilized, it is beneficial to further enhance network reliability and interoperability of switches and have further control over network switches (col. 4, ll. 18-24).

22. Regarding claims 9 and 20, Merchant teaches the system as claimed in claim 1 including the creation of generic commands (para. 0044) but does not clearly teach the step to “put a device into its most privileged level through an established connection to the device”. However, in related art, Rangachar teaches in a similar environment wherein generic commands are utilized and translated into a device specific command a generic command can be created which can control and make modifications to a network switch. Rangachar teaches the controlling and management of network switches (col. 4, ll. 58-62). One of ordinary skill in the art at the time of the applicant’s invention would have found it obvious to combine the teachings of Merchant with the teachings of Rangachar. One of ordinary skill would have been motivated to make such a

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combination wherein it is taught by Rangachar to within a system wherein generic commands are utilized, it is beneficial to further enhance network reliability and interoperability of switches and have further control over network switches (col. 4, ll. 18-24).

23. Regarding claims 22 and 23, Merchant teaches the utilization of network devices but does not explicitly teach the network devices being from a group consisting of switches, firewalls, routers and load balancers. However, in related art, Rangachar teaches the management of network switches (col. 4, ll. 5-11). One of ordinary skill in the art would have found it obvious to utilize the teachings of Merchant for the control of different network devices like switches, firewalls, routers and load balancers. One of ordinary skill would have been motivated because these are common network devices as taught by Rangachar.

Response to Arguments

24. Because the affidavit filed 11 December 2006 under 37 CFR 1.131 is insufficient to overcome the Sullivan reference, the use of the reference remains valid in the rejections under 35 U.S.C. 103(a).

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ballard et al. (US 4,937,825) teaches a method and apparatus for diagnosing problems in data communication networks. The method and apparatus permits a system control operator or a control application program to issue generic, non-device specific commands which are then translated to a device-specific command which is then directed towards the appropriate location.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes whose telephone number is (571)272-3899.

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The examiner can normally be reached on Monday-Thursday 6AM-10PM in accordance with IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

baa

Andrew Caldwell
ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER